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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,241	07/31/2000	Maury E. Collett II	CLT-100	3877

23557 7590 01/14/2003

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EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 01/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/629,241

Applicant(s)

COLLETT, MAURY E.

Examiner

Naschica S Morrison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

This is the third office action for application number 09/629,241, Wiring Clip for Securing Electrical Wiring to a Framing Member, filed on July 31, 2000. Claims 1-20 are pending.

Claim Objections

Claim 1 is objected to because of the following informalities: on line 4, insert --a-- before "first arm" and on line 5, "a metal" should be --the metal--. Appropriate correction is required.

Claim 14 is objected to because of the following informalities: on line 5, "a metal" should be --the metal--; on line 10, "areas" should be --area--; and on line 21, insert --,-- after "framing member". Appropriate correction is required.

Claim 18 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 18 fails to further limit parent claim 14 since it does not further limit the method steps recited therein.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-20 are treated as if applicant's intent is to claim merely the subcombination of the wiring clip and not the wiring clip in combination with the *framing member, wiring, electrical wiring, covering material, two-by-four metal framing member and/or covering fastening screws*. The framing member, wiring, electrical wiring, covering material, two-by-four metal framing member and covering fastening screws are considered functionally recited. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the subcombination and claims 1-20 will be rejected accordingly.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,508,730 to Knezo, Jr. (Knezo). Knezo discloses a wiring clip 41 (note Fig. 9) including the following: a main body (42); a wire receiving area (the space located under 42) adjacent the main body and centrally located between first and second arms (43); the first and second arms (43) each having respective first and second attachment means for attaching (45) located at first and second ends respectively (located at opposite sides of the longitudinal axis of 42). Knezo further discloses a substantially resilient, rubber wire compression member (49) located within the wire receiving area. (See column 5, lines 71-72 and column 6, lines 10-20) Knezo discloses that the first and second attachment means have a J-hook and a bend respectively. Finally, Knezo discloses a method for securing including the steps of positioning wiring, moving the clip over the wiring, and attaching the clip. (See column 6, lines 47-54)

Claims 1, 5, 6, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,631,809 to Jacobson. Regarding claims 1, 5, 6, 12, and 13,

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Jacobson discloses a wiring clip 5 (note marked-up copy of Figs. 1-2 attached to prior Office action) including the following: a main body (5,5a, 6,6a, 7,7a); a wire receiving area (A1) adjacent the main body and centrally located between first and second arms (14a, 12a); the first and second arms (14a, 12a) each having respective first and second attachment means for attaching (14,12) located at first and second ends respectively. Jacobson also discloses that the first attachment means comprises a J-hook (14) and the second attachment means (12) comprises a bend that can be slipped around an inner edge (13) of the member (9). Finally, Jacobson discloses that the clip is dimensioned and made of thin metal for allowing a screw to penetrate the clip.

Claims 1, 5, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,778,537 to Miller. Miller discloses a plastic wiring clip (note Figs. 1 and 4) including the following: a main body (includes 34, 14 and 36); a wire receiving area (30) adjacent the main body and centrally located between first and second arms (12); the first and second arms (12) each having respective first and second attachment means (28) for attaching the clip to first and second sides of a member (18), wherein the first and second attachment means (28) are located at first and second ends respectively (located at opposite sides of the dashed line in Fig. 1), wherein the first attachment means is a J-hook and wherein when the first and second arms (12) are attached to member (18), the wire receiving area (30) is secured to the face (surface of 18 adjacent 22) of member (18).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller. Miller discloses the wiring clip as applied to claims 1, 5, and 8 above, but does not disclose the clip being formed of flexible metal. However, It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the clip from a flexible metal since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claims 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobson. Regarding claim 9, Jacobson discloses the clip as applied to claims 1, 5, 6, 12, and 13 above, but does not specifically disclose the clip being dimensioned to fit around a two by four framing member. However, It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the clip to be capable of fitting around a two by four framing member since it has been held that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Regarding claim 17, Jacobson does not expressly teach the wiring being locatable at at least 1 ¼ inches from the first and second arms (26); however it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the wire receiving area to be located 1 ¼ inches from the first and second arms, since it has

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been held that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of U.S. Patent 5,079,802 to Blase et al. (Blase). Miller discloses the wiring clip as applied to claims 1, 5, and 8 above, but does not teach the wire receiving area (30) including a snap mechanism that opens and closes the wire receiving area. Blase discloses a flexible clip (10) comprising a receiving area (defined within 18) including a snap mechanism (14, 16) that opens and closes the receiving area. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the wiring clip of Miller to include a snap mechanism because one would have been motivated to provide a means for preventing inadvertent or accidental detachment of the wiring from the wiring clip as inherently taught by Blase.

Claims 14 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,885,853 to Reimer. Regarding claims 14, 18 and 20, Reimer discloses a wiring clip 30 (see attached marked copy of Fig. 2A; Fig. 2B) comprising: a main body (at 30 generally); a wire receiving/securing area adjacent the main body (defined by the internal surfaces of 30) and located between first and second arms (26a, 26b); the first and second arms (26a, 26b), each having respective first and second attachment means (32), located at first and second ends of the main body. Reimer also discloses a method for securing including the steps of positioning wiring on a member (20) having a face (20a) and first and second sides (20b, 20c), moving/securing the clip over the wiring, and attaching the clip (col. 3, lines 14 ff.). Reimer does not disclose

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attaching both attachment means at different times or attaching the wire to the clip and then to the post (20). However the order of the steps of attaching the first and second attachment means and the order of the steps of attaching the wire and the clip to the post are deemed to be made obvious by the functions of the structure of the combination above. Regarding claim 19, Reimer does not expressly teach the wiring located at least 1 ¼ inches from the first and second arms (26); however it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the wire receiving area to be located 1 ¼ inches from the first and second arms, since it has been held that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reimer in view of U.S. Patent 6,315,261 to Snyder. Reimer discloses the invention substantially as claimed and as applied to claims 14 and 18-20 above, but does not disclose the step of securing the clip to the post with a secondary attachment means comprising a screw. However, Snyder teaches the method of attaching a clip (10) to a post (11) including the step of providing a screw (10b) for securing the clip. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a secondary attachment means comprising a screw because one would have been motivated to allow for permanent attachment of the clip to the support as inherently taught by Snyder.

Response to Arguments

Applicant's arguments with respect to claims 9-11 and 14-20 have been considered but are moot in view of the new grounds of rejection.

Applicant's arguments filed 10/11/02 have been fully considered but they are not persuasive. In response to applicant's argument that "Knezo, Jr. teaches a clip which positions wiring across essentially the entire face of the trough 58, rather than centrally positioning on the face of a metal framing member", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is *capable of performing the intended use*, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Additionally, the clip of Knezo, Jr. is fully capable of positioning wiring located within the wire receiving area centrally along a metal framing member since the wire receiving area is located centrally between the first and second arms.


With regards to applicant's argument regarding the rejection of claim 6 in view of Jacobson, examiner respectfully disagrees. Specifically, as applied in the rejection above, Jacobson teaches the clip including a second arm (12a) including a second attachment means (12) comprising a bend which can be slipped around an inner edge (13) of a member (9).

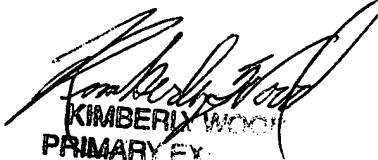
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Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 872-9326 (formal amendments) or (703) 872-9327 (After Final amendments).

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 872-9325.


Naschica S. Morrison
Patent Examiner
Art Unit 3632
1/6/03


KIMBERLY WOOD
PRIMARY EX

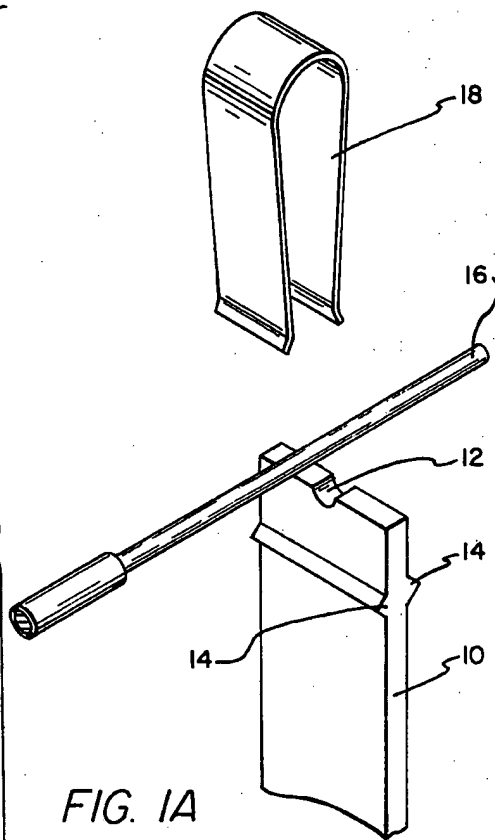


FIG. 1A

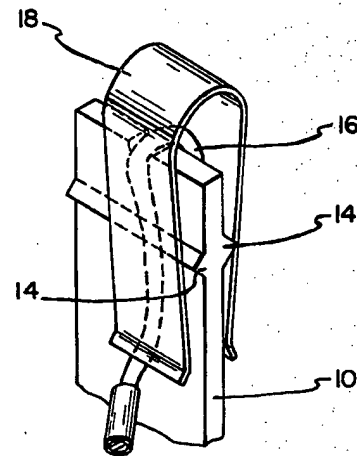


FIG. 1B

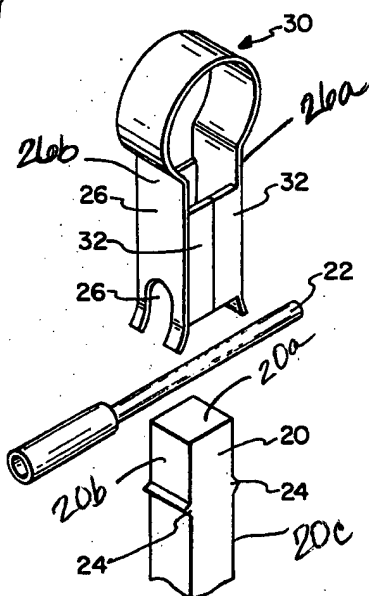


FIG. 2A

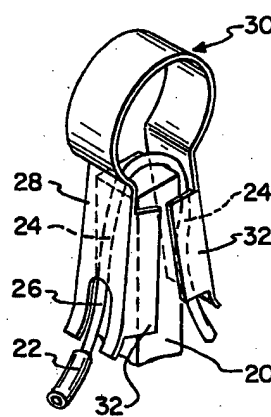


FIG. 2B

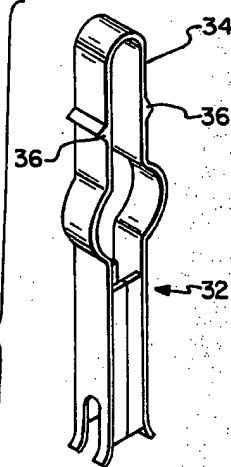


FIG. 3